

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 96-3-6
Served 3/8/96

Issued by the Department of Transportation
on the 4th day of March, 1996

Agreement adopted by the Tariff	:	
Coordinating Conference of the Inter-	:	Docket
national Air Transport Association	:	OST-95-802
relating to U.S.-Middle East fares	:	R-1 through R-16

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department for approval and exemption from antitrust laws under sections 41309 and 41308 of Title 49 of the United States Code and Part 303 of the Department's regulations. The agreement was adopted at the TC12 North Atlantic-Middle East Passenger Tariff Coordinating Conference held in Geneva on October 16-18, 1995, generally for effectiveness April 1, 1996.

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The agreement proposes a variety of revisions to fares between points in the Middle East and North America. 2/ Insofar as U.S. points are concerned, these revisions include increasing first and unrestricted economy class fares by two percent while restricted economy class fares remain unchanged. Fares from Egypt and Yemen, other than restricted economy class, are increased three percent, and fares between the United States and points in Jordan and Iraq are excluded from the agreement. In addition, the agreement revises seasonal periods, introduces APEX fares between points in Canada and the U.S., on the one hand, and points in the Middle East, on the other, and specifies special fares between points in the U.S. and points in the Middle East.

We will approve the agreement, subject to conditions. Based on our review of the information submitted and other relevant material, we conclude that the agreement, as conditioned, will not result in fares that are unlawful or injurious to competition in the markets at issue.

Our approval of the proposed premium and promotional fares is consistent with Department policy as stated in Order 85-3-8,

1/ IATA memorandum TC12 Reso/ P 1696 dated October 27, 1995, filed with the Department November 7, 1995.

2/ Approval of these agreements does not affect the restrictions regarding the sale in the United States of transportation by air with a stop in Lebanon (Order 85-7-45 as amended by Orders 92-8-25 and 95-9-30), Libya (Order 86-2-23) or Syria (Order 86-11-30).

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March 4, 1985. We allow carriers wide latitude in pricing these types of fares, which are generally sensitive to market demand and other competitive pressures that obviate the need for regulatory intervention in most circumstances.

We do, however, continue our regulatory supervision over direct service normal economy fares. 3/ The agreement proposes normal economy fares in direct-service markets at levels that exceed the Department's regulatory ceilings as formed by the Standard Foreign Fare Level (SFFL) plus upward fare flexibility. 4/ The carriers have not furnished any economic justification in support of the proposed levels. Under these circumstances, we will condition our approval of the agreement to require that such direct-service normal economy fares shall be no higher than the Department's applicable regulatory ceilings, and that each carrier, when filing tariffs implementing the agreement, must provide a comparison of its proposed direct-service normal economy fares against the Department's SFFL base levels.

Acting under Title 49 of the U.S. Code, and particularly sections 40101, 40103, 41300 and 41309:

1. We do not find that the resolutions in Docket OST-95-802, as set forth in Attachment A to this order and which have direct application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code, provided that approval is subject, where applicable, to previously imposed conditions, and provided further that (a) normal economy fares for direct-service markets filed by each IATA carrier in tariffs with the Department pursuant to these resolutions shall not exceed the applicable regulatory ceilings in effect at the time of filing, and (b) each IATA carrier must submit, at the time of filing and for comparative purposes, its SFFL base fares, proposed direct-service normal economy fares, and the percentages by which its proposed direct-service normal economy fares differ from the SFFL base levels for each market for which it files revised direct-service normal economy fares;

2. We do not find that the resolutions in Docket OST-95-802, as set forth in Attachment B to this order and which have indirect application in foreign air transportation as defined by the Code, are adverse to the public interest or in violation of the Code; and

3/ We exercise regulatory control over point-to-point economy fares, generally defined as "unbundled" or "restricted" fares, and, in markets where they are unavailable, the unrestricted economy fares.

4/ For example, the agreement proposes a New York-Cairo normal economy fare of \$1088 one way, whereas the current regulatory ceiling is \$988.

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3. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under the Title 49 of the U.S. Code.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-95-362, as separately set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in Docket OST-95-802, set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein.

By:

Charles A. Hunnicutt
Assistant Secretary for Aviation and
International Affairs

(SEAL)

Attachment A

**Resolutions with Direct Application in
Foreign Air Transportation, Docket OST-95-802**

<u>No.</u>	<u>IATA Resolution</u>	<u>Title</u>
R-1	001a	Special Applicability Resolution
R-2	002 Resolution	Standard Revalidating/Amending
R-3	044b	Intermediate Class Fares
R-4	054b	First Class Fares
R-5	064b	Economy Class Fares
R-6	015n	USA Add-On Amounts
R-8	070g	Excursion Fares between USA and Saudi Arabia
R-9	070mm	Excursion Fares between Canada , Mexico , USA and Middle East
R-11	073m	Advance Purchase Excursion Fare s from Canada to Middle East and between U S A and Middle East
R-12	073w	Special Winter Advance Purchas e Excursion Fares from USA to Egypt
R-14	084mm	Group Inclusive Tour Fares between Mexico, USA and Middle East
R-15	087x	Affinity Group Fares between USA and Saudi Arabia
R-16	092mm	Youth Fares between Canada, Mexico , USA and Middle East

**Resolutions with Indirect Application in
Foreign Air Transportation, Docket OST-95-802**

<u>No.</u>	<u>IATA Resolution</u>	<u>Title</u>
R-7	015v	Add-On Amounts (Except in USA)
R-10	070rr	Excursion Fares between Canada and Middle East
R-13	076u	Special Excursion (PEX) Fares from Mexico to Middle East